



Paper No. 6

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In re Application of
Barsky
Application No. 09/740,097
Filed: December 19, 2000
Attorney Docket No. 7782-11 CI 1

OFFICE OF PETITIONS
DECISION ON PETITION;
NOTICE OF MISSING PARTS

This decision concerns the June 12, 2003 petition under 37 CFR 1.137(b) to revive the above-referenced application.

The petition is **GRANTED**.

A "Notice to File Corrected Application Papers" was mailed on February 27, 2001 ("2/27/01 Notice"), indicating that drawings submitted with the application did not comply with the margins requirements of 37 CFR 1.84,¹ and setting forth an extendable 2-month period for submitting substitute drawings.² The substitute drawings were not filed on or before April 27, 2001, and no extension of time was obtained. The application became abandoned on April 28, 2001.

The instant petition encloses a set of substitute drawings which have been approved by the draftsman, the \$650 petition fee (small entity), and a statement that the entire delay in filing the requested drawings was unintentional. The petition is thus granted.

In addition, the Office notes that:

- (1) The instant application is a continuation-in-part (CIP) of Application No. 09/544,533 which, upon filing, named 3 inventors.
- (2) The "Declaration and Power of Attorney" filed with the instant application indicates a sole inventor, and is signed by only that inventor, while the concurrently filed "Power of Attorney by Assignee of Entire Interest (Revocation

¹ MPEP section 507 (Rev. 1, Feb. 2003) (To implement 18-month pre-grant publication of patent applications, the PTO has revised its drawing review process such that drawings in new utility/plant applications filed on or after 11/29/00 are initially reviewed by the OIPE to see if they can be effectively scanned and adequately reproduced. If the drawings are not acceptable, OIPE will object to the drawings, and notify the applicant to timely submit acceptable drawings to ensure timely publication of the application . . . [C]orrected drawings must be [timely] filed . . . to avoid abandonment of the application.).

Also, 37 CFR 1.85(a) (A utility/plant application will not be placed on the files for examination until objections to the drawings have been corrected); and MPEP section 608.02(a) (Rev. 1, Feb. 2003) (OIPE will not release applications to the Technology Centers [for examination] until acceptable drawings are filed . . . If a drawing is not timely received [by the PTO] in reply to a notice . . . , the application becomes abandoned for failure to reply.).

² The 2-month period for reply to a Notice to File Corrected Application Papers, similar to that in a Notice to File Missing Parts, is not identified on the Notice as a statutory period subject to 35 U.S.C. 133. Thus, extensions under 37 CFR 1.136(a) of up to 5 months are permitted. See MPEP 710.02(d) (Rev. 1, Feb. 2003).

of Prior Powers)" identifies the inventorship as consisting of all 3 inventors named in the parent application.

Therefore:

- (A) If the invention claimed in the CIP only involves 1 inventor, a revised power of attorney by the assignee, deleting the extra inventors, should be submitted along with a request to vacate the instant notice of missing parts.
- (B) If the inventorship for the instant CIP is properly identified in the assignee's power of attorney, i.e, there are 3 joint-inventors in this CIP, a supplemental declaration identifying the invention and all 3 inventors, and signed by the 2 other inventors must be submitted.

To avoid abandonment of this application, a response to (A) or (B), whichever is appropriate, must be filed within **TWO MONTHS** of the mailing date of the instant decision, along with a copy of the decision.

Finally, while the practitioner signing the instant petition is one of the original attorneys-of-record for this application, the Office is unable to locate a request to change correspondence address for supporting the new correspondence address recently entered in the PTO system. While a courtesy copy of this decision is being sent to the address indicated in the petition, all future correspondence on this application will be mailed to the current address-of-record unless the PTO is properly instructed otherwise.

This application is being returned to the Office of Initial Patent Examination to await a response to the instant notice of missing parts.

Telephone inquiries should be directed to the undersigned at (703) 308-0763.



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